

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,

v.

KELVIN BYRON,

Defendant.

CIVIL ACTION NO.

5:18-cr-00058-TES

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

The Government charged Defendant Kelvin Byron with possession with intent to distribute cocaine and possession with intent to distribute cocaine base in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(ii), and 841(b)(1)(C). Defendant alleges that the deputy illegally prolonged the traffic stop leading up to the search that revealed the cocaine and cocaine base in Defendant's vehicle, requiring the Court to suppress the drugs. After reviewing the record and applicable law, the Court finds that Defendant is right and **GRANTS** his Motion to Suppress [Doc. 15].

FACTUAL BACKGROUND

On September 26, 2017, at around 11:30 p.m., Defendant was driving alone southbound on I-75 in his black Lincoln MKZ when Butts County Sheriff's Deputy Brandon McGaha stopped him. [Doc. 20, Gov't Ex. 1, 00:00—01:23]; *see also* [Doc. 25, pp. 9:15—10:15]. Deputy McGaha noticed Defendant was "following too closely to another

vehicle” and decided to pull him over. [Doc. 25, p. 10:11–15]. Deputy McGaha activated his patrol car lights, which initiated the dashboard camera. [*Id.* at p. 20:1–24].¹ The video contains no audio, and there is no body camera footage of the incident. [*Id.* at p. 4:2–11].

The Court held an evidentiary hearing on Defendant’s Motion to Suppress, during which Deputy McGaha was the sole witness. *See generally* [*id.*]. During the hearing, Deputy McGaha described what is shown in the dashboard camera footage, and the following bullet points, headed by timestamps from the footage, describe the traffic stop.

- **00:00:** Deputy McGaha, traveling in the left lane of the three-lane highway, activates his blue lights and the dashboard camera.
- **00:07—00:21:** Defendant’s black Lincoln MKZ’s brakes and right blinker activates, but the vehicle does not move from the center lane.
- **00:21—00:40:** The Lincoln MKZ moves to the right lane but does not move onto the shoulder of the road.
- **00:41—00:46:** The Lincoln MKZ moves onto the shoulder of the road, but then returns to the right lane of the highway.
- **00:51—01:22:** The Lincoln MKZ moves back onto the shoulder of the road but does not stop immediately. Instead, it continues along for roughly 20 seconds before braking and slowing down to a complete stop. Deputy McGaha testified that Defendant drove for over a mile after the deputy activated his blue lights before finally coming to a complete stop. [Doc. 25, p. 22:22–24]. The total distance Defendant traveled before stopping led the deputy to believe “[Defendant] was contemplating fleeing.” [*Id.* at p. 12:15–16].
- **01:33—02:07:** Deputy McGaha exits his vehicle and approaches the passenger side of the Lincoln MKZ. He knocks on the passenger-side window to get Defendant’s attention. According to his testimony,

¹ The footage was admitted into evidence as “Government’s Exhibit 1.” [Doc. 20, Gov’t Ex. 1].

Deputy McGaha asked Defendant for his license, which Defendant provided. [*Id.* at p. 13:2–12]. Deputy McGaha further testified that Defendant “was sweating from his forehead. And his hand was trembling when he handed [the deputy] his license.” [*Id.* at p. 13:19–20].

- **02:08—02:14:** Defendant exits his vehicle but does not close the driver-side door. Both Defendant and Deputy McGaha move to the back of the Lincoln MKZ and stand in front of the deputy’s patrol car.
- **02:15—02:23:** Deputy McGaha frisks Defendant.
- **02:24—02:36:** Deputy McGaha finds something in Defendant’s pocket. Defendant pulls it out to show Deputy McGaha that it is cash. Deputy McGaha finishes the frisk and finds no weapons on Defendant’s person.
- **02:57—03:12:** Deputy McGaha goes to the patrol car to retrieve a warning citation form and clipboard before returning to the front of the patrol car.
- **03:23:** Deputy McGaha begins filling out the warning citation. Defendant appears to be speaking to someone on his cell phone.
- **03:56—04:01:** Deputy McGaha stops writing to ask Defendant a question. Defendant hangs up his phone before answering.
- **04:07—04:17:** Deputy McGaha asks Defendant another question. While responding, Defendant starts to walk back to his car, but Deputy McGaha stops him and brings him back to the front of the patrol car. According to his testimony, the deputy asked Defendant if he had an insurance card, and Defendant stated that he did and started to walk back to his vehicle. [*Id.* at p. 15:1–8]. The deputy was concerned and stopped Defendant because he “was worried [Defendant] might flee.” [*Id.* at p. 15:7–8].
- **04:12—06:38:** Deputy McGaha continues to fill out the warning citation while periodically stopping to ask Defendant questions about where Defendant had been traveling whether he had any luggage, weapons, or illegal items in the vehicle, and whether anybody else drove the Lincoln MKZ besides Defendant. [Doc. 25, pp. 15:9–10, 16:2–11, 25:6–16, 26:3–9, 53:7–22]. Deputy McGaha testified that when he asked Defendant whether he had any luggage in the vehicle, Defendant turned

as if to return to the vehicle and open the hatch to show the deputy that it was empty, but the deputy stopped him. [*Id.* at p. 25:15–24]. It took Deputy McGaha approximately two minutes and 26 seconds to ask these questions. [*Id.* at pp. 24:24–26:11]. He had not yet completed the warning citation at the time he asked the questions. [*Id.* at p. 26:21–22]. When the Court asked Deputy McGaha why he asked these questions, he testified that, although he could not specify what criminal activity was afoot, he “felt criminal activity was present,” and he “asked those investigative questions[] to find out what might be going on.” [*Id.* at pp. 67:25–68:9].

- **07:08–07:24:** Deputy McGaha notices the driver-side door of the Lincoln MKZ is open and goes to close it before returning to continue filling out the warning citation. [*Id.* at p. 26:15–24].
- **Around 08:39:** Deputy McGaha asks Defendant for permission to search the vehicle, and Defendant consents. Deputy McGaha has still not completed the traffic citation form. [*Id.* at p. 27:3–10].

After Defendant consented to the search and while Deputy McGaha was awaiting backup, Defendant ran to and reentered his vehicle. [Doc. 20, Gov’t Ex. 1, 12:35–40]. Deputy McGaha followed Defendant, leading to an altercation. [*Id.*]. Eventually, backup arrived, Defendant was arrested, and the deputies searched Defendant’s vehicle. [Doc. 25, pp. 16:23–18:12]. The search revealed “a large Saran Wrap package containing suspected cocaine.” [*Id.* at p. 18:21–23].

Defendant moves to suppress the evidence, arguing Deputy McGaha impermissibly extended the traffic stop in violation of Defendant’s Fourth Amendment rights. Specifically, Defendant argues that the questions the deputy asked from 04:12–06:38 were unrelated to the stop and therefore tainted the consent Defendant ultimately gave to search the vehicle. The Government, on the other hand, argues that Deputy

McGaha's questions were reasonably related to the mission of the stop, and any delay in completing the mission of the stop was supported by reasonable suspicion.

To resolve this dispute, the Court must determine whether Deputy McGaha prolonged the stop without the requisite reasonable suspicion to justify prolonging the stop. As discussed below, the Court finds Deputy McGaha both prolonged the stop and lacked reasonable suspicion to do so; thus, the Court must grant Defendant's Motion to Suppress.

DISCUSSION

A. Standard of Review

When a defendant challenges evidence garnered through a warrantless search and seizure and seeks suppression of that evidence, "the burden of proof as to the reasonableness of the search rests with the prosecution. The Government must demonstrate that the challenged action falls within one of the recognized exceptions to the warrant requirement, thereby rendering it reasonable within the meaning of the [F]ourth [A]mendment." *United States v. Hall*, No. 7:17-CR-28 (HL), 2019 WL 454111, at *4 (M.D. Ga. Feb. 5, 2019) (quoting *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983)).

B. Fourth Amendment Violation

A traffic stop constitutes a seizure under the Fourth Amendment; however, because a traffic stop is to be of a limited nature, it is "more analogous to an investigative detention than custodial arrest" and is analyzed under *Terry v. Ohio*, 392 U.S. 1 (1968).

United States v. Purcell, 236 F.3d 1274, 1277 (11th Cir. 2001). Thus, to comply with the Fourth Amendment, a traffic stop “must be reasonably related in *scope* to the circumstances which justified the interference in the first place.” *Id.* (quoting *Terry*, 392 U.S. at 20) (emphasis in original). Moreover, the traffic stop may not extend in *duration* beyond the time necessary to process the traffic violation without reasonable, articulable suspicion of other illegal activity. *Id.* (citing *United States v. Holloway*, 113 F.3d 192, 196 (11th Cir. 1997)). That is, a traffic stop can last as long in duration as is necessary to achieve tasks within the scope or “mission” of the stop. Such tasks typically include “determining whether to issue a traffic ticket[,] . . . checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). Such tasks also include the time required to “attend to related safety concerns.” *Id.* (internal citations omitted). An officer’s “[a]uthority thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* To extend the stop beyond that duration, an officer must have reasonable, articulable suspicion of other illegal activity. *Purcell*, 236 F.3d at 1277.

1. Deputy McGaha Prolonged the Stop.

Until recently, only those stops that were “measurably” prolonged by questions unrelated to the stop violated the Fourth Amendment. *See United States v. Griffin*, 696 F.3d 1354, 1362 (11th Cir. 2012) (quoting *Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009))

("[U]nrelated questions posed during a valid *Terry* stop do not create a Fourth Amendment problem unless they 'measurably extend the duration of the stop.'").

However, this changed with the Supreme Court's ruling in *Rodriguez*, 135 S. Ct. at 1616. See *United States v. Campbell*, 912 F.3d 1340, 1352–53 (11th Cir. 2019) (recognizing that *Rodriguez* abrogated *Griffin*). The Supreme Court directly overruled the prior *de minimis* rule, holding that "[o]n-scene investigation into other crimes . . . detours from" the mission of the stop, and even if an officer pursues the traffic-related purpose of the stop diligently, the officer does not "earn bonus time to pursue an unrelated criminal investigation." *Rodriguez*, 135 S. Ct. at 1616. In addition, an officer is not allowed to ask unrelated questions simply because he had not yet completed his investigation into the reason for the stop. *Id.* The "critical question . . . is not whether the [unrelated inquiry] occurs before or after the officer issues the ticket . . . but whether conducting the [unrelated inquiry] 'prolongs' —*i.e.*, adds time to— 'the stop.'" *Id.* Thus, the United States Supreme Court made it unmistakably clear that if a law enforcement officer deviates from his declared "mission" (the purpose for the stop) and that detour adds *any* time—rather than a *measurable* time—to the stop, the officer violates the Fourth Amendment. See *Campbell*, 912 F.3d at 1353 ("The Supreme Court was clear that the length of time [of unrelated inquiries] is immaterial" when it "rejected the Eighth Circuit's *de minimis* rule, under which minor extensions of seizures were tolerated.").

In *Campbell*, the Eleventh Circuit established a new three-part test based on *Rodriguez. Id.* “[T]o unlawfully prolong [a traffic stop], the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion.” *Id.* Under this test, it no longer matters whether a stop is prolonged for seven minutes or 30 seconds—all that matters is that there is a delay resulting from inquiries not directly related to the overall mission of the stop. Thus, the Fourth Amendment “prohibits prolonging a stop *to investigate other crimes.*” *Id.* (emphasis in original).

Not all unrelated inquiries, however, will result in a Fourth Amendment violation. The *Campbell* court explained that in situations where more than one officer is on the scene, one officer can complete the mission of the stop while another asks unrelated questions or completes unrelated tasks. *Id.* at 1351. For example, a search by a narcotics-detection dog was permitted in *Illinois v. Caballes*, 543 U.S. 405 (2005), because “[t]he second officer conducted the dog sniff while the first officer was in the process of writing a warning ticket.” *Id.* Moreover, in *Arizona v. Johnson*, the “officer made unrelated inquiries into whether Johnson was affiliated with a gang, but because the first officer simultaneously followed up on the purpose of the stop, it did not add any time.” *Id.* (internal citations omitted). In this case, however, Deputy McGaha was the sole officer on the scene during the initial traffic stop. Therefore, any unrelated questions prolonged the stop for the duration it took him to ask the questions and await and receive the answers.

Deputy McGaha stopped Defendant for following another vehicle too closely. [Doc. 25, p. 10:2–15]. Thus, the deputy’s “mission” was simply to issue the accompanying traffic citation. In compliance with *Rodriguez*, Deputy McGaha testified that he stopped Defendant to issue him a warning. [Doc. 25, p. 14:10–12]. So far, so good. But Defendant argues that the lawful traffic stop transformed into an unlawful detention when “the officer [began] a long, unrelated inquiry that he admit[ted] under oath ha[d] nothing to do with the investigation of the traffic stop.” [Doc. 26, p. 8]. Specifically, Defendant objects to the officer asking whether he had his insurance card, from where he traveled, whether he had luggage, who he was traveling to see, whether anybody else ever drives Defendant’s vehicle, and whether Defendant had anything illegal in the vehicle. *See [id.]* at pp. 8–9]. Defendant contends “[t]hese questions were unrelated to the warning ticket.” [*Id.* at p. 9].

Some of these questions are legitimately incident to a traffic stop and are therefore permissible. *See Campbell*, 912 F.3d at 1354. Inquiries such as “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance” are typical to a traffic stop and incident to the officer’s mission. *Rodriguez*, 135 S. Ct. at 1615. “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly” and do not, on their own, transform the legality of a traffic stop. *Id.* “Additional ‘fishing expedition’ questions such as ‘What do you do for

a living?’ and ‘How much did your [vehicle] cost?’” on the other hand “are simply irrelevant and constitute a violation of *Terry*.” *United States v. Pruitt*, 174 F.3d 1215, 1221 (11th Cir. 1999). Therefore, Deputy McGaha’s questions about Defendant’s insurance, from where Defendant traveled, and who he was going to see did not improperly prolong the stop. If Deputy McGaha had only asked these questions, there would have been no problem. But he did not stop there.

The deputy also asked Defendant about his luggage, whether anyone else drives the Lincoln MKZ, and, most importantly, whether Defendant had “anything illegal” in the vehicle. *See* [Doc. 25, p. 53:1–25]; [Doc. 26, p. 5]. These inquiries were not incident to the traffic stop. *See Campbell*, 912 F.3d at 1354. Of these three questions, the Court finds particular fault in the question about whether Defendant had anything illegal in his vehicle, which clearly fails the first two parts of the *Campbell* test. It was unequivocally an unrelated inquiry aimed at investigating other crimes, and it added time to the stop. Therefore, unless the deputy had a reasonable, articulable suspicion of another crime, he illegally prolonged the stop. *See id.*

2. Deputy McGaha Lacked the Reasonable Suspicion Required to Justify Prolonging the Stop.

Under *Terry*, an officer may detain a suspect if he has “a reasonable suspicion that such persons are involved in criminal activity.” *United States v. Tapia*, 912 F.3d 1367, 1370 (11th Cir. 1990). The reasonable suspicion standard requires that the officer “be able to point to specific and articulable facts which, taken together with rational inferences from

those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. 1, 88 S. Ct. 1868, 1879 (1968) (footnote omitted). “[R]easonable suspicion’ is determined from the totality of the circumstances and from the collective knowledge of the officers involved in the stop.” *Tapia*, 912 F.3d at 1370. This standard is “considerably less than proof of wrongdoing by a preponderance of the evidence or even the implicit requirement of probable cause that a fair probability that evidence of a crime will be found.” *Id.* However, the officer is still required to have “more than an inchoate ‘hunch,’ and the Fourth Amendment accordingly requires that police articulate some minimal, objective justification for an investigatory stop.” *Id.*

Deputy McGaha testified that he asked Defendant whether he had anything illegal in the car, whether anyone else drove the car, and whether he had luggage, because he believed that Defendant was considering fleeing and could have been under the influence of drugs. *See* [Doc. 19, p. 3]; [Doc. 25, p. 15:7–8]. Specifically, the deputy believed Defendant might flee because of the time it took him to pull over, because he did not close the door to his vehicle, and because he started to walk back to his vehicle when asked for his insurance card. *See* [Doc. 19, pp. 8–9]; [Doc. 25, p. 12:15–16]. Deputy McGaha believed Defendant was under the influence of drugs because Defendant’s “actions were animated and his face was sweating profusely, even though he was dressed in a tank top and shorts.” [Doc. 19, p. 3].

The Court is unconvinced. These questions are not particularly illuminating with regard to the deputy's suspicions. Assuming that Defendant was in fact thinking about fleeing, the only potential crime he could commit would be obstruction. It naturally follows that one cannot commit the crime of obstruction by running from the cops until he actually runs from the cops, and we already know that mere contemplation is not illegal in and of itself.² *Rodriguez* allows a law enforcement officer to extend a traffic stop to investigate *other* crimes, not *potential* crimes. Further, the Government cannot reasonably argue that the deputy was allowed to stop to investigate potential obstruction by asking if there was anything illegal in the car, whether someone else occasionally drove the car, or whether Defendant had any luggage in his car. These questions have nothing to do with a suspect potentially fleeing.

The Government also argues that Deputy McGaha believed Defendant was "on some sort of stimulant." [Doc. 19, p. 3]. Even if the deputy had reasonable suspicion of another crime such as possession of drugs, it follows that the deputy would only be permitted to ask questions *in relation to such crimes*. Whether anyone else ever drove Defendant's Lincoln MKZ or whether Defendant had any luggage was not related to the deputy's proffered suspicion that Defendant was under the influence of drugs. Critically,

² Indeed, if Deputy McGaha was concerned about the possibility of Defendant fleeing to his car during the traffic stop, he could have legally placed Defendant in the back of his patrol car. "[A]n investigatory stop does not necessarily ripen into an arrest because an officer . . . secures a suspect in the back of a patrol car." *United States v. Acosta*, 363 F.3d 1141, 1147 (11th Cir. 2004). Asking further questions and prolonging a stop without restraining a suspect who may run does not make it less likely that he will, in fact, run.

even if you assume Deputy McGaha accurately identified sweating and animated arm movements as characteristics of drug use (as opposed to characteristics a nervous and overheated person would have exhibited on a hot September night in Georgia), the Court could accept that he might—just might—be allowed to ask if Defendant had ingested any illegal substances.

But Deputy McGaha did not ask this narrowly tailored, specific question. Instead, he expanded his inquiry to anything illegal, which necessarily encompasses anything from drugs, unregistered guns, and stolen items to certain amounts of currency, counterfeit purses, or open containers of alcohol. This overly broad question is a quintessential “fishing expedition” and clearly shows that the deputy was acting on an inchoate hunch, the precise sort of intangible guess (although often accurate) prohibited by our Constitution. Indeed, when asked during the evidentiary hearing why he asked Defendant about his luggage and whether he had weapons or contraband, Deputy McGaha candidly admitted he suspected “some form of criminal activity,” but he “[did] not know” and could not explain what criminal activity he suspected, and “[t]hat’s why [he] asked those investigative questions, to find out what might be going on.” [Doc. 25, pp. 67:25—68:9]. Simply put, the presence of a general suspicion of some sort of unidentified criminal behavior could not properly form the basis for the deputy’s attempt to uncover illegal activity with unrelated questions that prolonged the stop. Accordingly, the consent Defendant eventually gave to search his vehicle was tainted by the

unlawfully prolonged stop, and any illegal substances that resulted from the tainted search cannot be admitted into evidence.

CONCLUSION

As explained above, the Court finds that Deputy McGaha unlawfully prolonged the traffic stop in violation of Defendant's Fourth Amendment rights before Defendant could consent to the search of his vehicle. Therefore, and as required by United States Supreme Court precedent, the Court **GRANTS** Defendant's Motion to Suppress [Doc. 15].

SO ORDERED, this 26th day of July, 2019.

S/ Tilman E. Self, III
TILMAN E. SELF, III, JUDGE
UNITED STATES DISTRICT COURT